

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-138025-06

Date: FEBRUARY 20, 2007

In re:

Legend:

Decedent =

Spouse =

Trustee =

Trust =

QDOT =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in response to your letter dated July 11, 2006, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to file the notice and certification required under section 20.2056A-10(a)(2) of the Estate Tax Regulations that Spouse has become a United States citizen.

According to the facts submitted and representations made, Decedent executed Trust, a revocable family trust, on Date 1. Trust was thereafter amended on Date 2 and

Date 3. Decedent died on Date 4, survived by Spouse, who was not a United States citizen as of Date 4.

Under the terms of Article 3, Section 4 of Trust, if Spouse is not a United States citizen at the time of Decedent's death, a portion of the Trust assets (determined in accordance with a specified formula) is to be distributed to a trust (QDOT) intended to qualify as a qualified domestic trust described in section 2056A.

It is represented that on Schedule M of Decedent's Form 706, United States Estate (and Generation-skipping Transfer) Tax return, an election was made under section 2056A(d) to treat QDOT as a qualified domestic trust and a deduction was claimed under section 2056(d) for the value of the property passing to QDOT.

On Date 5, Spouse became a United States citizen. It is represented that Spouse has continuously resided in the United States from the date of Decedent's death until the time that Spouse became a United States citizen.

It is represented that Trustee inadvertently failed to file the final Form 706-QDT, U.S. Estate Tax Returns for Qualified Domestic Trusts, as required under section 20.2056A-10(a)(2), in order that QDOT will no longer be subject to the estate tax imposed under section 2056A(b).

Trustee requests an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to file a final Form 706-QDT notifying and certifying to the IRS that Spouse has become a United States citizen as required by section 20.2056A-10(a)(2).

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse. Sections 2056(d)(1)(A) and 2056(d)(2)(A) provide that if the surviving spouse of the decedent is not a United States citizen, the marital deduction is not allowed under section 2056(a), unless the property passes to the surviving spouse in a qualified domestic trust.

Under section 2056A(a), a qualified domestic trust is any trust in which: (1) the trust instrument requires that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation and provides that no distribution (other than income) may be made from the trust unless a United States trustee has the right to withhold from such distribution the tax imposed under section 2056A(b) on the distribution; (2) the trust meets the requirements as the Secretary may by regulations

prescribe to ensure collection of the tax imposed by section 2056A(b); and (3) an election is made by the executor of the decedent with respect to the trust.

Under section 2056A(b)(1)(A), an estate tax is imposed on any distribution of principal from the qualified domestic trust (other than on account of hardship) before the date of death of the surviving spouse. In addition, under section 2056A(b)(1)(B) an estate tax is imposed on the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Under section 2056A(b)(12) and sections 20.2056A-10(a)(1) and (2), a QDOT is no longer subject to the estate tax imposed under § 2056A(b) if the surviving spouse becomes a citizen of the United States, and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the qualified domestic trust notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time of up to 6 months for filing is granted under section 6081.

Under section 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). The time for filing the notice required under section 20.2056A-10(a)(2) is not expressly prescribed by statute. Accordingly, Trustee may seek an extension of time to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government. Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Trustee is granted an extension of time of 60 days from the date of this letter to file with the Internal Revenue Service the required notice and certification that Spouse has become a citizen of the United States. The required notice and certification should be made on a Form 706-QDT. The Form 706-QDT should be filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706-QDT. A copy is enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures:

Copy of this letter

Copy of this letter section 6110 purposes